IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 25337 of 1999

Between:

K. Indrasena Reddy S/o Gopal Reddy
R/o Kukunoorpally, Kondapaka (M), Medak Dist.

..... PETITIONER

AND

1 Union of India rep. by its Deputy Secretary,
Ministry of Home Affairs, Loknayak Bhavan,
(Hyderabad FF Cell), New Delhi.
2 The Govt. of Andhra Pradesh rep. by its Joint Secretary to Govt.
Revenue (FF) Dept., Secretariat, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ order or direction more particularly in the nature of writ of Mandamus declaring the proceedings No.112/776/94-FF(HC) dt: 21-10-99 issued by the 1st Respondent, rejecting the claim of the Petitioner for granting pension under Swatantra Sainik Samman Pension Scheme, as arbitrary, illegal, in voilation of Art. 14 of the Constitution of India and in voilation of the Scheme framed by the union of India and for extraneous considerations and to issue a consequential direction to the Respondents to grant the pension to the petitioner under Swatantra Sainik Samman Pension Scheme forthwith with effect from the date of application.

Counsel for the Petitioner: MR.SUBBA RAO KORRAPATI

Counsel for the Respondent No.1: MR.ARAJASHEKAR REDDY (SC FOR CENTRAL GOVERNMENT)

Counsel for Respondent No.2: The G.P. for Home

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25337 OF 1999

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ORDER:

The petitioner claims that he participated in freedom struggle against the then Nizam of Hyderabad State. He alleges that the Government of the time issued arrest warrant to the petitioner and several others so as to avoid the arrest, he went underground for six months. Therefore in accordance with Swatantra Sainik Samman Pension Scheme (the Scheme, for brevity), he made an application to the respondents. Second respondent recommended the case of the petitioner for sanction of the pension. When appropriate orders are not passed, the petitioner filed the Writ Petition being W.P.No.33261 of 1998 before this Court. By order dated 13.11.1998, this Court disposed of the said writ petition directing the respondents to take appropriate decision with regard to the application of the petitioner and consider his case for grant of Pension under the Scheme. The first respondent by a letter dated 19.03.1999, requested the petitioner to produce the necessary particulars/documents like photographs, specimen signature, bank account etc. The petitioner submitted the same but the first respondent by letter dated 21.10.1999 rejected the claim of the petitioner for sanction of freedom fighters pension under the Scheme. Aggrieved by the same, the petitioner filed the present writ petition seeking a declaration and direction to the respondents to grant pension to the petitioner under the Scheme.

Though *Rule nisi* is served, respondents 1 and 2 have not filed any counter affidavit. Be that as it is, the learned counsel for petitioner
Sri Korrapati Subba Rao vehemently contends that there was ample evidence before the first respondent to show that the petitioner faced arrest of warrant for detaining him and that so as to avoid arrest, he remained underground for more than six months. He placed strong reliance on the list of detenus under Section 119 of Defence of Hyderabad Rules in support of the contention that he remained underground and therefore he is eligible for pension under the Scheme.

The first respondent rejected the application of the petitioner for sanction of pension for the following reasons.

i. the documents submitted by you shows that all the 98 persons enlisted were

to be detained by the Police as per the powers conferred to Police Department; and it was not executed according to your claim.

ii. Warrant of arrest in your case does not appear to have been issued by the concerned Jurisdictional Magistrate, as there is no warrant of arrest in detention cases:

iii. the document does not prove the required minimum period of six months' sufferings as in all the enactments of detention, the periodicity of detention once is to be given in definite terms, which is lacking here; and

iv. the personal knowledge certificate furnished by you is not from eligible certifier.

The petitioner as seen above did not produce any evidence in proving his allegation that he remained underground pursuant to detention order issued by Director General of Police of Nizam Government by proceedings dated 05.12.1356 Fasli. Paragraph 4 of the Pension scheme, 1980 mentions different categories of freedom fighters, who are eligible for pension. The same reads as under:

WHO IS ELIGIBLE?

For the purpose of grant of Samman pension under the scheme, a freedom fighter is:-

a. A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

b. The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 01-08-1980.

EXPLANATION

1. Detention under the orders of the competent authority will be considered as imprisonment.

2. Period of normal remission upto one month will be treated as part of actual imprisonment.

3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.

4. Broken period of imprisonment will be totaled up for computing the qualifying period.

(b) A Person who remained underground for more than six months provided he was:

1. a proclaimed offender; or
2. one on whom an award for arrest, head was announced; or
3. one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

(e) A person who became permanently met pacitated during firing or lathi charge.

(f) A person who lost his job (central or state Government) and thus means of livelihood for participation in national movement.

A MARTYR is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British.

Paragraph 9 of the Scheme contains the method or manner proving the claim. The same reads as under:

HOW TO PROVE THE CLAIMS (EVIDENCE RQUIRED)

The applicant should furnish the documents indicated below whichever is applicable.

(a) IMPRISONMENT/DETENTION ETC.

Certificate from the concerned jail authorities, District Magistrates or the State Government in case of non-availability of such certificates co-prisoner certificates from a sitting M.P. or M.L.A. or from an ex-M.P. or an ex-M.L.A. specifying the jail period (Annexure-I in the application form).

b. REMAINED UNDERGROUND:

(i) documentary evidence by way of Court's/Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighter; who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

c. INTERNMENT OR EXTERNMENT

(i) Order of internment or externment or any other corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available. (Annexure-II in the application).

Note:-

The Certified veteran freedom fighters in respect of underground suffering, internment/externment and the applicants should belong to the same administrative unit before the reorganization of States and their area of operation must be the same.

d. LOSS OF PROPERTY, JOB, ETC.

Orders of confiscation and sale of property, Orders of dismissal or removal from service.

If a person claims that he remained underground pursuant to detention order, such person has to produce documentary evidence, like copy of Court order proclaiming of such person as an offender, and announcing an award on his head. A certificate from veteran freedom fighters, who had themselves undergone imprisonment for five years or more, if the final records are not forthcoming due to their non-availability is also sufficient evidence. It is not the case of the petitioner that he has produced evidence by way of Court order proclaiming him as an absconder or announcing an award on his head. It appears he has produced a certificate from another freedom fighter and the same was rejected by the first respondent observing that such freedom fighter, who has given 'personal knowledge certificate' is not eligible certifier. The first respondent has considered all aspects of the matter in the light of various guidelines contained in the Scheme and I do not find any arbitrariness or illegality in rejecting the claim of the petitioner for sanction of the pension under Swatantra Sainik Samman Pension Scheme.

The writ petition is devoid of merits and is accordingly dismissed without any order as to costs.

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(V.V.S.RAO,J)

23.09.2004.

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To

1. The Deputy Secretary, Ministry of Home Affairs, Union of India, Loknayak Bhavan, (Hyderabad FF Cell), New Delhi.

2. The Joint Secretary to Government, Revenue (FF) Department, Government of Andhra Pradesh, Secretariat, Hyderabad.

3. Two C.C. s to the G.P. for Home, High Court Buildings, Hyderabad(OUT.

4. 2 CD copies.